IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SECOND DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 23842 of 2004

Between:

M/s. Food World, rep by Managing Partner, Partner Pakeerabad Sanjeev Kumar s/o Babu Rao, Manasa Sarovar Park GT Bypass Road, Guntur Guntur District

..... PETITIONER

AND

The Commissioner, Guntur Municipal Corporation, Guntur.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ order or direction more particularly one in the nature of Writ of Certiorari call for records pertaining to proceedings in Roc. No. 4362/87/A2, dt 18-12-2004 issued by the respondent and quash the same as illegal, arbitrary, unconstitutional and in violative of Article 19 (1)(4) of the Constitution of India and consequently suspend the proceeding in Roc. No. 4362/87/A2 dt 18.12.2004 issued by the respondent and pass such other order or orders.

Counsel for the Petitioner : M/S. C.KODANDA RAM

Counsel for the Respondent : MR. T.S.VENKATA RAMANA

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.23842 OF 2004

ORDER :

Heard both sides and perused the material on record.

The petitioner was granted a lease by the respondent Corporation for maintenance of the restaurant and cottages located in 'Manasa Sarovar Park'. As per the lease deed executed on 01-07-2002, the period of lease was three years. While so, under the impugned notice dated 18-12-2004 the petitioner was informed by the respondent Corporation that a police raid had taken place on 11-12-2004 in which it was found that some illegal and unlawful activities were going on in the cottages about which many complaints were also received from the public. In the circumstances, the Corporation has resolved to terminate the agreement and to take over the premises in the public interest and accordingly called upon the petitioner to hand over the property with all furniture, Air Conditioners and etc., within 24 hours, failing which the Corporation will be constrained to take possession of the premises. Aggrieved by the said order, dated 18-12-2004, this writ petition is filed contending inter alia that the termination of the lease without affording any opportunity to explain the allegations is arbitrary or illegal and in violation of the principles of natural justice.

The learned Counsel for the petitioner contends that the petitioner at no point of time has contravened the terms & conditions of the agreement and that on the ground of

the alleged illegal activities with the petitioner is not at all concerned, the respondent Corporation is not justified in terminating the lease without issuing any notice and particularly in seeking recovery of possession without even permitting the petitioner to take away the movables purchased by him for running the restaurant. The learned Counsel vehemently contends that the said action of the respondent being highly arbitrary, it is necessary in the interest of justice to set aside the impugned proceedings.

At the outset, it is to be noted that the rights and liabilities of the parties are governed by the conditions of the lease dated 01-07-2002. The learned Counsel for the respondent Corporation points out that under clause-IV (2) of the said lease agreement, it shall be lawful for the respondent Corporation to cancel the lease forthwith by notice in writing addressed to the lessee. A perusal of the said clause shows that a right is reserved to the Municipal Corporation to cancel the lease at any time by issuing a notice in the public interest.

In the counter-affidavit filed on behalf of the Corporation, it is stated that in the raids conducted by the Police Department it was found that illegal and unlawful activities are being run in the cottages being maintained by the petitioner and that there is a specific clause in the agreement that the petitioner shall not carry any illegal activities in the restaurant or in the cottages. It is also stated that two deaths have been taken place in the park for which the Police Department registered Cr.Nos.206 of 2004 and 232 of 2004 respectively. In the circumstances, the subject was placed before the Corporation in the meeting held on 18-12-2004 in which it was unanimously resolved to cancel the lease and to take over the premises. In terms of the said resolution, the petitioner was directed under the impugned notice to hand over the premises and accordingly the premises was taken over on 20-12-2004 in the presence of the Mandal Revenue Officer, Pedakakani.

As already noted above, the issue raised for adjudication is essentially founded on a dispute between the parties pursuant to a non-statutory contract voluntarily entered between the parties. The law is well settled that such dispute which involves enforcement of contractual obligations is not amenable to writ jurisdiction under

Article 226 of the Constitution of India. Hence, on that ground the writ petition is liable to be dismissed as not maintainable.

The contention of the petitioner as to the arbitrary exercise of power is also without any merit since there is a specific clause under the lease agreement which entitles the respondent Corporation to terminate the lease forthwith in public interest. Since the lease has already been terminated in terms of the said clause, the consequential notice directing the petitioner to hand over the possession cannot be said to be arbitrary or illegal. The Writ Petition is accordingly dismissed.

However, the petitioner is granted liberty to make a representation before the respondent for return of the movables installed in the premises in question which are purchased by the petitioner for running the restaurant, furnishing a list of the same within a period of two weeks from today, in which event, the respondent Corporation shall consider the same and return all such movables belonging to the petitioner within two weeks thereafter.

Subject to the above directions, the Writ Petition is dismissed. No costs.

02nd February, 2005.

gbs

To

1. The Commissioner, Guntur Municipal Corporation, Guntur.

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